

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA
3
4 DEBRA PANIAGUA, No. C 10-01981 CW
5 Plaintiff,
6 v. ORDER GRANTING
7 COUNTY OF ALAMEDA, et al., DEFENDANTS'
8 Defendants. MOTION TO DISMISS
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11 Defendants County of Alameda, Karen Benjamin, Melissa Turner,
12 Celeste Drummond and Denise Smith move to dismiss Plaintiff Debra
13 Paniagua's complaint. Plaintiff opposes the motion in part. The
14 motion was taken under submission on the papers. Having considered
15 the papers submitted by the parties, the Court GRANTS Defendants'
16 motion.
17
18 BACKGROUND
19 The following allegations are contained in Plaintiff's amended
20 complaint.
21 In January, 2008, Plaintiff discovered that she was pregnant.
22 The pregnancy resulted from a rape. In March, 2008, she decided
23 that she would attempt to give the child up for adoption. However,
24 the child's father did not sign the "waiver forms for adoption."
Am. Compl. ¶ 15.
25 While receiving prenatal care at a hospital, Plaintiff
26 befriended a woman named Olivia A., who became interested in
27 adopting Plaintiff's child. Olivia A. hired an attorney and took
28 steps toward adopting Plaintiff's child.

1 On May 3, 2008, Plaintiff gave birth to a boy, who was born in
2 good health and without complications. That same day, an anonymous
3 caller contacted a "child abuse hotline" and reported that
4 "plaintiff had told hospital staff that plaintiff did not intend to
5 keep minor but had made arrangements for the minor to be adopted by
6 Olivia A." Am. Compl. ¶ 17.

7 On May 4, 2008, Plaintiff's child was "placed into protective
8 custody without a warrant" by Defendants Drummond and Benjamin,
9 social workers employed by the County. Am. Compl. ¶ 18. On or
10 about May 6, 2008, Defendants Turner and Smith, also social workers
11 employed by the County, "detained and removed [Plaintiff's child]
12 without a warrant" and placed the child "into foster care with
13 strangers." Id. ¶ 19. Also on May 6, Turner and Smith filed a
14 petition, indicating that Plaintiff was not able to meet her
15 child's needs and that she wanted to give the child up for
16 adoption. In the accompanying petition and detention report,
17 Turner and Smith identified Olivia A. as a prospective adoptive
18 parent "and a potential placement" for the child while he was in
19 custody of the County. Id. ¶ 22.

20 On May 7, 2008, a hearing was held in Alameda County Superior
21 Court on the County's petition. The petition was dismissed.

22 On May 7, 2010, Plaintiff filed this lawsuit. On September
23 13, 2010, Defendants moved to dismiss Plaintiff's original
24 complaint. Plaintiff opposed Defendants' first motion to dismiss
25 only after the Court warned her that her claims would be dismissed
26 for failure to prosecute if she failed to file an opposition by a
27 date certain. Plaintiff's opposition was a three-paragraph

1 response, which simply sought leave to amend. On November 2, 2010,
2 the Court dismissed Plaintiff's complaint, granting her leave to
3 amend her complaint to cure the deficiencies identified in
4 Defendants' first motion to dismiss.

5 Plaintiff's amended complaint, which was not signed, asserts
6 claims under 42 U.S.C. § 1983 for alleged deprivations of her
7 rights "not to be deprived of liberty without due process of law,"
8 "to be free from unreasonable interference with parent-child
9 relationships," and "to procedural due process." Am. Compl. ¶ 26.
10 The Court understands these to be claims for violations of her
11 Fourteenth Amendment rights to procedural and substantive due
12 process. Plaintiff also alleges Defendants violated her Fourth
13 Amendment "right to be free from unreasonable searches and
14 seizures." Id. In addition, she claims that Defendants violated
15 her "right to be free from arbitrary intrusions on [her] physical
16 and emotional well-being." Id. Finally, she brings a claim for
17 municipal liability under § 1983 against the County, which could be
18 brought only in accordance with Monell v. Department of Social
19 Services, 436 U.S. 658 (1978).

20 On December 7, 2010, Defendants moved to dismiss Plaintiff's
21 amended complaint. Again, Plaintiff opposed Defendants' motion to
22 dismiss only after the Court warned her that her claims would be
23 dismissed for failure to prosecute if she did not file a timely
24 opposition.

25 **LEGAL STANDARD**

26 A complaint must contain a "short and plain statement of the
27 claim showing that the pleader is entitled to relief." Fed. R.

1 Civ. P. 8(a). Dismissal under Rule 12(b)(6) for failure to state a
2 claim is appropriate only when the complaint does not give the
3 defendant fair notice of a legally cognizable claim and the grounds
4 on which it rests. Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555
5 (2007). In considering whether the complaint is sufficient to
6 state a claim, the court will take all material allegations as true
7 and construe them in the light most favorable to the plaintiff. NL
8 Indus., Inc. v. Kaplan, 792 F.2d 896, 898 (9th Cir. 1986).
9 However, this principle is inapplicable to legal conclusions;
10 "threadbare recitals of the elements of a cause of action,
11 supported by mere conclusory statements," are not taken as true.
12 Ashcroft v. Iqbal, ____ U.S. ___, 129 S. Ct. 1937, 1949-50 (2009)
13 (citing Twombly, 550 U.S. at 555).

14 DISCUSSION

15 In her three-page, unsigned "response" to Defendants' motion
16 to dismiss, Plaintiff does not address their arguments that she was
17 not subjected to a search or seizure and she lacks standing to
18 assert claims for violations of her child's Fourth Amendment
19 rights. Nor does she address Defendants' assertion that she cannot
20 seek § 1983 liability for alleged intrusions on her "physical and
21 emotional well-being" because such conduct does not violate rights
22 afforded by the United States Constitution. Accordingly,
23 Plaintiff's § 1983 claims are dismissed with prejudice, to the
24 extent they are based on violations of the Fourth Amendment and of
25 the right to be free from intrusions on her physical and emotional
26 well-being.

27 Defendants also argue that Plaintiff's claims are barred by
28

1 the statute of limitations. "The statute of limitations applicable
2 to an action pursuant to 42 U.S.C. § 1983 is the personal injury
3 statute of limitations of the state in which the cause of action
4 arose." Alameda Books, Inc. v. City of L.A., ___ F.3d ___, 2011 WL
5 258089, at *7 (9th Cir.) (citing Wallace v. Kato, 549 U.S. 384, 387
6 (2007)). In California, the limitations period on personal injury
7 claims is two years. Cal. Civ. Proc. Code § 335.1; Alameda Books,
8 Inc., 2011 WL 258089, at *7 n.8. "Although California law
9 determines the length of the limitations period, federal law
10 determines when a civil rights claim accrues." Lukovsky v. City &
11 Cnty. of S.F., 535 F.3d 1044, 1048 (9th Cir. 2008) (citation
12 omitted; emphasis in original). Federal law provides that,
13 generally, "a claim accrues when the plaintiff knows or has reason
14 to know of the injury which is the basis of the action." Id.
15 (citation and internal quotation marks omitted); see also Wallace,
16 549 U.S. at 388. An exception to this rule exists with respect to
17 claims for false imprisonment or false arrest, which is a
18 subspecies of the former. Wallace, 549 U.S. at 389. The "statute
19 of limitations upon a § 1983 claim seeking damages for a false
20 arrest in violation of the Fourth Amendment, where the arrest is
21 followed by criminal proceedings, begins to run at the time the
22 claimant becomes detained pursuant to legal process." Id. at 397.

23 As noted above, Plaintiff's child allegedly was placed into
24 "protective custody" on May 4, 2008 and into foster care on May 6,
25 2008. Plaintiff's lawsuit, however, was filed on May 7, 2010.
26 Relying on Wallace, Plaintiff argues that her claims are not time-
27 barred because they accrued at the time of the state court hearing
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1 on May 7, 2008. However, Wallace was limited specifically to
2 claims for false imprisonment; it did not displace the general rule
3 that a claim accrues when a plaintiff knows or has reason to know
4 of the injury that is the basis for a claim. Here, Plaintiff has
5 not plead a claim for false imprisonment in violation of the Fourth
6 Amendment, nor do her allegations suggest that she was unlawfully
7 detained. Instead, her remaining theories of liability concern
8 alleged violations of her procedural and substantive due process
9 rights, which appear to be based on the individuals Defendants'
10 conduct on May 4 or May 6. Because these acts took place outside
11 of the two-year limitations period imposed under California law,
12 Plaintiff is barred from recovering for them.

13 Accordingly, Plaintiff's § 1983 claims against the individual
14 Defendants and the County are dismissed as time-barred. Plaintiff
15 does not suggest that she is entitled to tolling of the statute of
16 limitations. Thus, amendment of these claims would be futile and
17 leave to amend is denied.

18 CONCLUSION

19 For the foregoing reasons, the Court GRANTS Defendants' motion
20 to dismiss Plaintiff's complaint. (Docket No. 20.) Plaintiff did
21 not respond to Defendants' arguments that her § 1983 claims fail as
22 a matter of law, to the extent that they are based on violations of
23 the Fourth Amendment and her right to be free from intrusions on
24 her "physical and emotional well-being"; accordingly, her § 1983
25 claims, to the extent that they rest on these bases, are dismissed
26 with prejudice. In addition, Plaintiff's claims are barred by the
27 statute of limitations. Because Plaintiff does not suggest that

1 she is entitled to the tolling of the statute of limitations,
2 amendment of these claims would be futile and leave to amend is
3 denied.

4 The Clerk shall close the file.

5 IT IS SO ORDERED.

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7 Dated: 2/11/2011

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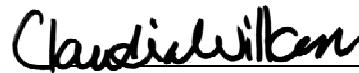
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CLAUDIA WILKEN

United States District Judge